

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of
Truth-in-Billing and
Billing Format

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CC Docket No. 98-170

COMMENTS OF
THE CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION

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The Cellular Telecommunications Industry Association ("CTIA")¹ hereby submits its Comments in the above captioned proceeding.²

I. INTRODUCTION AND SUMMARY

In the Billing Notice the Commission proposes specific guidelines that all carriers, including CMRS providers, must follow "to ensure that consumers receive thorough, accurate, and understandable bills from their telecommunications carriers."³ The Commission's stated goal for this proceeding "is to construct, with the help of the states, consumer groups, and the

¹ CTIA is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the association covers all Commercial Mobile Radio Service ("CMRS") providers and manufacturers, including 48 of the 50 largest cellular and broadband personal communications service ("PCS") providers. CTIA represents more broadband PCS carriers and more cellular carriers than any other trade association.

² In the Matter of Truth-in-Billing and Billing Format, CC Docket No. 98-170, Notice of Proposed Rulemaking, FCC 98-232 (rel. Sep. 17, 1998) ("Billing Notice").

³ Billing Notice at ¶ 6.

industry, workable solutions to enable consumers to reap the benefits of the competitive telecommunications marketplace while at the same time protecting themselves from unscrupulous competitors."⁴

CTIA strongly supports and shares in the Commission's goal of providing consumers accurate and understandable bills, and pledges its assistance to find efficient solutions. During this time of transition, consumers particularly need protection from those carriers trying to capitalize on the inevitable confusion surrounding the development of a competitive telecommunications market. Ensuring that customers receive the information necessary to make informed choices is simply good customer service, and is beneficial to all parties.

In proposing measures to assist consumers, CTIA cautions against the Commission adopting a "one-size-fits-all" approach to billing regulation. This is due in large part to the competitive nature of the CMRS industry. To ensure that consumers are properly informed without imposing undue burdens on CMRS carriers, the Commission should, at a minimum:

- Tailor its billing regulations as applied to the competitive CMRS industry. For example, the Commission should refrain from regulating CMRS carriers' lawful recovery of Universal Service charges because the competitive CMRS market requires pricing flexibility;
- Respect CMRS carriers' First Amendment right to separately describe the Federal, State, and local taxes and mandates that amount to 20 to 30 percent of wireless customers' bills;

⁴ Id.

- Permit carriers to require that each government entity imposing taxes and mandates on wireless services provide similar explanatory information, including a mailing address and a toll-free telephone number for the receipt of customer inquiries and complaints;
- Refrain from holding CMRS carriers liable under Title II for actions taken by their customer service representatives; and
- Assert exclusive jurisdiction over all customer complaints pursuant to Section 208 of the Communications Act.

By such actions the Commission can ensure a workable solution to billing issues that benefits consumers and carriers alike.

II. IMPOSING THE SAME SET OF BILLING REGULATIONS ON ALL TELECOMMUNICATIONS CARRIERS WILL THWART COMPETITION TO THE DETRIMENT OF WIRELESS CONSUMERS.

The Billing Notice, in formulating a series of regulatory proposals, makes no effort to distinguish among the various telecommunications providers. In fact, the Billing Notice makes clear that the issues raised in this proceeding are "equally applicable" to bills rendered by CMRS carriers to their customers.⁵ CTIA believes that any billing regulations the Commission adopts should account for key differences between the wireless industry and other telecommunications carriers.

A. Fundamental Differences Existing Between The CMRS Firms And Other Telecommunications Carriers Justify Separate Treatment.

As with such other matters as Customer Proprietary Network Information and Local Number Portability, the Commission reflects a proclivity to sweep competitive CMRS providers into regulatory

⁵ Id.

schemes designed to address the practices and circumstances of non-CMRS telecommunications carriers. In fact, some of the identified misdeeds that form the basis for the proposed billing rules do not even apply to wireless carriers. For example, "slamming" does not occur in a wireless environment because CMRS customers must reprogram (or replace) their mobile handset to switch carriers. This cannot be done without the prior knowledge and consent of the consumer.

Similarly, were the Commission to apply wholesale its proposals to the CMRS industry, it would subject CMRS providers to obligations improperly tailored to the way they do business as competitive carriers. Consumers would be ill-served by such an outcome. For example, unlike Local Exchange Carriers and long distance service providers, wireless carriers typically rely on contracts (or other forms of service agreements) that set forth the terms of service in significant detail and require a customer's affirmative consent to establish service. No single bill can provide the detailed description of services and charges these agreements contain.

Moreover, wireless service contracts often are effective for a fixed term, and explicitly may provide that new taxes and other government mandates imposed during the term of the contract will be passed on to the user in addition to the agreed-upon service charges. Therefore, customers have been informed, and have consented to bear the risk of new government taxes and mandates in exchange for more attractive service terms.

In addition, unlike local and long distance carriers, CMRS carriers traditionally have used a combination of fixed and usage-sensitive charges. They also increasingly offer customers innovative and procompetitive packages of local and long distance services. These mixed service bundles, which are tailored to specific consumer preferences, cannot easily be reconciled with the Commission's proposal to segregate various service categories.⁶ Moreover, roaming charges, which are unique to the CMRS industry, also may be difficult to reconcile with the proposed rules. In other words, the greater the variety of service packages to choose from -- consumer choice being the hallmark of a competitive market -- the more difficult for the Commission to adopt rules of general applicability.⁷

B. The Competitive Nature Of CMRS Forecloses Billing Regulations Tied To A CMRS Carrier's Costs.

On a related note, CTIA specifically opposes any proposal to prohibit carriers from charging customers more for Universal

⁶ Billing Notice at ¶ 17 ("[o]ne manner in which telephone bills may be better organized is to present separate categories of services (such as charges for local, long distance, and miscellaneous services) in clearly separate sections within the telephone bill, and if possible, on separate pages.") To the extent that bundled service packages are reflective of a more general industry trend, the Commission should ensure that its billing regulations do not inadvertently chill such market developments.

⁷ Competitive wireless carriers have gone to considerable expense, through, among other things, consumer focus groups, to ascertain customer preferences. Consumers have made it clear that they want clear, understandable bills. In light of this, carriers have a market-driven incentive to meet consumer expectations for billing, and they compete for customers on this basis.

Service than the actual cost the carrier incurs.⁸ As the Commission correctly notes, "in a competitive market, consumers may react to price increases by exploring their options with alternative companies."⁹ Of course, this is true regardless of whether the charge is listed as a government-imposed tax or not. In the competitive CMRS market, demand is elastic; thus price increases, no matter their source, can drive away consumers. In such a market, the alternative to passing along costs to customers is for a carrier to absorb them.

How a CMRS carrier decides to recover Universal Service charges from any individual customer is a competitive decision, and, in a competitive market, should not be subject to regulatory requirements. The primary reason motivating a carrier's decision to list various government fees on its bills separately is the competitive consequence of doing so.

Different carriers will have their own approach to recovering their costs, including the administrative costs of assessing and collecting these charges. Certain services, such as pre-paid CMRS services, will have Universal Service costs that will not be ascertainable at the point of purchase; other services, such as roaming and resale, can apportion the Universal

⁸ See Billing Notice at ¶ 31 ("We seek to determine whether it is misleading or unreasonable, under Section 201(b) of the Act, for a carrier to bill a consumer for an amount identified as attributable to a particular cost while charging more than the actual cost incurred.")

⁹ Id.

Service contribution across groups of users, rather than individual customers.

Carriers' billing decisions have long been recognized as a competitive matter.¹⁰ Billing simply cannot be regulated in the manner contemplated by the Billing Notice (i.e., the government assessing a carrier's costs, and then limiting a carrier's recovery from the customer to such costs), without opening the back door to rate and service regulation. This is specifically prohibited on the Federal, State, and local level by Section 332.¹¹ For these reasons, the Commission should refrain from regulating a CMRS carrier's line item assessments on a cost basis.

¹⁰ See, e.g., Letter from Kathleen B. Levitz, Acting Chief, Common Carrier Bureau, to Donald L. Pevsner, Esq., at 2 (dated Dec. 2, 1993), Appendix A to "Southwestern Bell Mobile Systems, Inc. Petition for Declaratory Ruling," DA 97-2464 (Nov. 12, 1997) ("Thus, carriers compete in terms of their billing practices, and customers are free to select a carrier that offers the most desirable billing options. If the Commission were to mandate a particular billing procedure, it would eliminate this form of service competition.").

¹¹ 47 U.S.C. § 332(c)(1)(A) and (c)(3)(A). Consistent with Section 332, the Commission has forbore from federal tariff filing obligations, Implementation of Sections 3(n) and 332 of the Communications Act; Regulatory Treatment of Mobile Services, GN Docket No. 93-252, Second Report and Order, 9 FCC Rcd 1411, ¶¶ 173-179 (1994) (forbearance from Section 203 of the Communications Act, 47 U.S.C. § 203, which details federal tariff filing obligations), and has preempted similar State rate regulation. See, e.g., Petition of the People of the State of California and the Public Utilities Commission of the State of California to Retain Regulatory Authority Over Intrastate Cellular Service Rates, PR Docket No. 94-105, Report and Order, 10 FCC Rcd 7486 (1995), recon. denied, 11 FCC Rcd 796 (1995).

III. THE COMMISSION'S BILLING REGULATIONS SHOULD PRESERVE CARRIERS' RIGHTS TO LIST VARIOUS GOVERNMENT-IMPOSED TAXES AND SHOULD PERMIT CARRIERS TO REQUIRE GOVERNMENTS TO DISCLOSE INFORMATION NECESSARY TO FACILITATE TAXPAYER INQUIRIES.

While no carrier should be subject to an affirmative billing obligation, CTIA does support CMRS carriers' First Amendment right to separately describe the Federal, State, and local taxes and mandates that amount to 20 to 30 percent of wireless customers' bills. CTIA also believes that carriers should have the right to require each government entity imposing taxes and mandates on wireless services to provide a mailing address and toll-free telephone number for the receipt of customer inquiries and complaints.

A. The Commission Should Avoid Imposing Billing Regulations For Politically-Motivated Reasons.

As an initial point, the Billing Notice seeks to require long distance carriers, when they include a separate line item for cost recovery of Universal Service charges, to inform consumers of corresponding reductions in access charges that offset increased Universal Service charges.¹² Of fundamental importance, by proposing rules designed to regulate particular line-item descriptions on a telecommunications carrier's bill, the Commission unnecessarily veers in the direction of a recent controversy. There simply is no good reason to let the Universal Service tax debate influence what ostensibly otherwise is portrayed in the Billing Notice as an industry-wide issue.

¹² Billing Notice at ¶ 28.

Instead, the Commission should concentrate on adopting rules to address the legitimate billing issues this Billing Notice raises.

In addition, with respect to disclosure of access charge reductions, unlike long distance carriers, CMRS carriers have received no benefit from access charge reform. Therefore, detailing Universal Service charges on wireless bills will be all "debit" with no corresponding setoffs. As noted above, any decision the CMRS carrier makes in this regard should be based on competitive circumstances and not regulatory fiat.

Moreover, if the Commission does decide to require carriers to net Universal Service charges against access charge reductions, it should only apply this rule to those carriers, i.e., the long distance carriers, that benefit from reduced access charges. CMRS carriers, of course do not pay access charges; therefore, they should not be subject to the same requirements.

B. Consistent With Their First Amendment Rights, CMRS Carriers Should Have The Choice To List Specific Government-Imposed Charges On A Line-Item Basis.

As the Commission's Billing Notice reflects,¹³ the freedom of speech protections found in the First Amendment operate as a bar to Federal Government censorship of legitimate commercial expressions. This means that so long as a carrier's billing

¹³ Billing Notice at ¶ 15 ("restrictions on speech that ban truthful, non-misleading commercial speech about a lawful product cannot withstand scrutiny under the First Amendment") (citation omitted).

descriptions are not "deceptive,"¹⁴ or otherwise misleading, they cannot be banned as a matter of course. Simply stated, these First Amendment protections ensure a carrier's fundamental right to assess charges to subscribers on a line-item basis. Any regulations the Commission adopts in this proceeding should be cognizant of this fundamental limitation on government action.

Line-item charges on a subscriber's bill are not inherently misleading or deceptive. By contrast, they detail on a charge-by-charge basis for the subscriber the specific fees assessed and the basis for their assessment.

The Supreme Court "has not approved a blanket ban on commercial speech unless the speech itself was flawed in some way, either because it was deceptive or related to unlawful activity."¹⁵ Consequently, a Commission rule prohibiting a carrier's line-item billing *per se* would face rigorous judicial review under the First Amendment and, for the Commission to prevail, it would have to demonstrate affirmatively that such billing methods are misleading or deceptive. Under the relevant test:

When a State regulates commercial messages to protect consumers from misleading, deceptive, or aggressive sales practices, or requires the disclosure of beneficial consumer information, the purpose of its regulation is consistent with the reasons for according

¹⁴ See id. (citing Virginia Pharmacy Board v. Virginia Citizens Consumer Council, Inc., 425 U.S. 748, 772 n. 24 (1976)).

¹⁵ 44 Liquormart, Inc. v. Rhode Island, 517 U.S. 484, 500 (1996) (quoting Central Hudson Gas and Electric Corp. v. Public Service Comm'n of New York, 447 U.S. 557, 566, n.9 (1980)).

constitutional protection to commercial speech and therefore justifies less than strict review. However, when a State entirely prohibits the dissemination of truthful, non-misleading commercial messages for reasons unrelated to the preservation of a fair bargaining process, there is far less reason to depart from the rigorous review that the First Amendment generally demands.¹⁶

Given the nature of line-item billing, the First Amendment protections afforded commercial speech ensure a carrier's right to assess charges to subscribers, including those specifically mandated by the government, on a line-item basis¹⁷ and should be recognized in any rules adopted by the Commission.

C. Carriers Should Be Permitted To Require All Governments Imposing Taxes and Fees On the Wireless Industry To Comply With Bill Disclosure Obligations.

CTIA believes that when CMRS carriers opt to separately identify various charges and service providers, the Commission's billing rules should correspondingly permit CMRS carriers to obligate those governments imposing such taxes and mandates to billing disclosure obligations. That is, such governments should be obligated to provide information, at the carrier's request, for inclusion in a carrier's bill designed to ensure that

¹⁶ Id. at 501.

¹⁷ See Central Hudson Gas and Electric Corp., 447 U.S. at 566 ("For commercial speech to come within [the First Amendment], it at least must concern lawful activity and not be misleading. Next, we ask whether the asserted governmental interest is substantial. If both inquiries yield positive answers, we must determine whether the regulation directly advances the governmental interest asserted and whether it is not more extensive than is necessary to serve that interest.").

customers have accurate and informative contact information in case of questions or disputes.

The commitment to ensure truth in billing should not be one-sided. Government agencies should have to answer to their constituents for any costs they impose just as carriers are responsible to their customers for the charges they assess. Merely imposing a series of "truth in billing" regulations on telecommunications carriers without similar obligations on government entities is not enough. All levels of government should be obligated to inform consumers, at the request of the carrier, about billing issues resulting from line-item descriptions of taxes and fees in a carrier's bill in a clear, timely manner. This means that, at a minimum, Federal, State, and local governments should be obligated to include information such as a mailing address and a toll-free number for the receipt of customer inquiries and complaints.

IV. THE COMMISSION'S BILLING REGULATIONS SHOULD NOT EXTEND TO ACTIONS TAKEN BY CUSTOMER SERVICE REPRESENTATIVES.

CTIA opposes the Commission's proposal to regulate carriers' customer service representatives ("CSRs") under the billing regulations it adopts in accordance with Title II. Specifically, CTIA opposes the Commission's proposal to hold carriers liable for a Section 201(b) violation if CSRs provide inaccurate and/or misleading information concerning Universal Service and other line item charges.¹⁸

¹⁸ See Billing Notice at ¶ 34.

As with billing, customer service is a competitive issue. Because it is in a carrier's best interests to train its CSRs properly to answer consumer questions in a timely and helpful manner, this issue is better left to the market.

Moreover, as a legal matter, it is unfair and impractical to hold CSRs to the Section 201 standard. Customers ask questions in many different ways and under different contexts, and customer confusion can easily mislead a CSR. Moreover, taking any one question and answer out of the context of the entire call can also create misleading results. The Commission should not adopt such a subjective, vague standard in this case.¹⁹

Alternatively, if the Commission chooses to regulate telecommunications CSRs under Title II, and a carrier decides to list various government mandates on a line-item basis, then the Commission should ensure that consumers with questions about mandates imposed by various government agencies can contact such agencies directly. That is, government agencies, whether Federal, State, or local, should be required to provide information to include on the carriers' bills that will inform customers of the relevant contact and a toll-free number for each government mandate.

This will permit customers to contact the government entity directly, and not have to go through a carrier's CSR to obtain an

¹⁹ Cf. United States v. NYNEX Corp., 8 F.3d 52 (D.C. Cir. 1993) (a violation for criminal contempt of a consent decree cannot arise where the consent decree is not sufficiently clear and reasonably specific).

explanation of a specific tax or mandate. This should significantly reduce the risk that a CSR provides incorrect information to an inquiring customer. It should also reduce confusion and ensure that consumers have access to information in a timely manner.

V. THE COMMISSION SHOULD ASSERT EXCLUSIVE JURISDICTION OVER ALL CUSTOMER COMPLAINTS.

Finally, wireless carriers' billing practices increasingly are being subjected to lawsuits and challenges at the State level.²⁰ As the Commission is already aware, at times billing issues can be inextricably linked to carrier rates. For reasons of efficiency and fairness, and consistent with Congressional intent, the Commission should act as the sole forum for complaints filed pursuant to its billing regulations.²¹

As the Billing Notice reflects, the Commission is invoking its authority under Title II, specifically Section 201,²² as the basis for adopting truth-in-billing obligations.²³ Were the

²⁰ See, e.g., Comments of the Cellular Telecommunications Industry Association in File No. 97-31, DA 97-2464 "SOUTHWESTERN BELL MOBILE SYSTEMS, INC. Petition for a Declaratory Ruling Regarding Rates Charged by CMRS Providers When Charging for Incoming Calls and Charging for Calls in Whole-Minute Increments," (Jan. 7, 1998).

²¹ Cf. Lee v. Contel Cellular of the South, 1996 U.S. Dist. LEXIS 19636, *20 (Nov. 21, 1996) ("If state courts or even federal courts throughout the country were allowed to make individual case-by-case determinations on the appropriateness of 'rounding' air time usage rates there would be a substantial danger of inconsistent rulings and interference with the FCC's policy making as to competition.").

²² 47 U.S.C. § 201.

²³ Billing Notice at ¶ ¶ 12-13.

Commission to adopt rules consistent with its Title II common carrier authority designed to regulate the content and format of CMRS bills, then, as a legal matter, it should assert exclusive jurisdiction over all billing complaints from wireless customers.

Such complaints could be pursued via the formal complaint procedures found in Section 208 of the Communications Act,²⁴ or through alternative dispute resolution mechanisms such as the CTIA-sponsored wireless industry arbitration rules administered by the American Arbitration Association. By handling all consumer complaints under its billing rules, the Commission will also ensure that consumers have access to an efficient, uniform complaint resolution process.


²⁴ 47 U.S.C. § 208.

VI. CONCLUSION

For these reasons, CTIA respectfully requests that the Commission adopt the proposals made herein.

Respectfully submitted,

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